IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

MACA.No. 214 of 2006

OPMV.1159/1998 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/3RD RESPONDENT

NATIONAL INSURANCE COMPANY LIMITED,
THODUPUZHA NOW REPRESETNED BY ITS DEPUTY MANAGER,
KOCHI REGIONAL OFFICE, AJAY VIHAR, KOCHI-16.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS: RESPONDENTS/PETITIONERS
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1. KUBJA GHOSH, W/O.LATE KRISHNA CHANDRA GHOSH, QR.NO.413/1, CISF QUARTERS, FACT (CD), TOWNSHIP, AMBALAMEDU.

2. SAYAN GHOSH (MINOR), REPRESENTED BY HIS NEXT FRIEND KUBHA GHOSH, DO -DO-

R1-R2 BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.MANJUSHA MOHANDAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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J.B.KOSHY & V.GIRI, JJ.

M.A.C.A.214 OF 2006

Dated 20th August, 2007

JUDGMENT

Koshy,J.

A Sub Inspector, aged 31, employed in Central Industrial Security Force, died in a motor accident. His wife also died in the same accident leaving only a two year old child. The child represented by her grandmother filed a petition for compensation. Tribunal awarded a total compensation of Rs.10,98,500/= for the death of the father of the claimant. Compensation awarded for the death of the mother was below Rs.2,00,000/=. Quantum of compensation granted for the death of the father is disputed by the insurance company in this appeal.

2. The deceased was a Sub Inspector employed in CISF. His monthly income as per the certificates produced was Rs.7,208/=. Ext.A7 is the certificate issued by the Deputy Commandant of CISF which reveals that in natural course he would have got promotion up to the post of Assistant Commandant. Since he is employed in CISF, his age of retirement would be 60. That means he would be continuing in service for another 29 years. In those 29 years he would have

got the benefit of wage revisions effected time to time, yearly increments etc. even without a promotion. If he retires from service, he will get pensionary benefits taking into account the last drawn pay. Therefore, taking the principle enunciated by the Supreme Court in ***General Manager, KSRTC*** v. ***Susamma Thomas*** ((1994) 2 SCC 176) and considering the future prospects, if we take the monthly income as Rs.15,000/=, it will not be too excessive. But, the Tribunal has taken Rs.8,000/= only as the monthly income and then one third was deducted for calculating compensation. We are of the opinion that no change is necessary in the monthly loss of dependency assessed by the Tribunal.

3. Second question is whether the multiplier used is correct or not. A three member bench of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451), held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163-A, but, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the second schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In ***United India Insurance Co. Ltd.*** v. ***Patricia Jean Mahajan***

and others (JT 2002 (5) SC 74), the Apex Court held that, except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to the introduction of the multiplier system, were held to be no more good system. It was further held that normally the multiplier, as indicated in the second schedule, should be applied. Though the second schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In ***Abati Bezbaruah*** v. ***Dy. Director General, Geological Survey of India and another*** ((2003) 3 SCC 148), it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily the above multiplier system should be followed. Here, since the deceased was aged 31, taking guidance from the second schedule 17 was taken as the multiplier. It is contended by the claimants that considering the present life expectation of a person and retirement of the deceased as he has 31 years more service, a higher multiplier ought to have been taken and because of the reduction in interest rate, a higher multiplier than that is mentioned in the second schedule can be taken. It is the contention of the

insurance company that the child is only aged two years and, therefore, only 15 as mentioned in the second schedule can be taken. We are of the opinion that age of claimants should be looked into when an unmarried person dies. In such cases, the age of the parents as well as deceased are taken into account and whichever is the lower multiplier, that is taken for calculation. Here, the poor two year old child has to live alone and considering the present educational expenses and also considering the retirement age of the deceased, we are of the view that the multiplier taken as 17, taking guidance from the second schedule, is not very high so as to warrant interference in an appeal proceedings. It is true that, as contended by the claimants, any amount will not be able to compensate the loss of father and mother in the same accident. However, considering the present rate of interest, we reduce the interest rate from 9% to 7.5%.

The appeal is disposed of with the above observations.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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